

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.215 OF 1998

RAMESHBHAI LAVJIBHAI MAKWANA

VERSUS

STATE OF GUJARAT & ORS.

Appearance:

MRS KA MEHTA for the Petitioner

CORAM: MR.JUSTICE S.K.KESHOTE

Date of Order: 03/02/1998

C.A.V. ORDER

#. The learned counsel for the petitioner prays for impleading of the Chief Election Officer, General Administration Department, Sachivalaya, Gandhinagar, as respondent to this Special Civil Application. This prayer made by the learned counsel for the petitioner is allowed and the Chief Election Officer, General Administration Department, Sachivalaya, Gandhinagar, is ordered to be impleaded as respondent No.4. The office is directed to make necessary correction in the cause title of the Special Civil Application forthwith.

#. Challenge has been made by petitioner, by this Special Civil Application, to the order of respondent No.2 dated 2/5.1.98, under which the petitioner, an unarmed police constable, was ordered to be transferred from Bhadran Police Station to Khambhat Police Station with immediate effect.

#. The learned counsel for the petitioner contended that this order of transfer is contrary to the Code of Conduct, as issued by the Election Commissioner and as per that Code of Conduct, a Government officer could not be transferred till the election process is over. It has next been contended that in pursuance of the Code of Conduct aforesaid, the Government of Gujarat, General Administration Department, vide Circular dated 2.1.98, directed all the heads of the Departments that no officer should be transferred till the elections are over with a view to that free and just elections are held. So this order is wholly arbitrary. Prior permission of the

Election Commissioner or District Collector has not been taken before transferring the petitioner. Lastly, the learned counsel for the petitioner contended that because of the brain disease of the younger son of the petitioner, he was transferred from Sojitra to Bhadran only in the month of March 1996 and again within a short period he has been transferred. The learned counsel for the petitioner, placing the order passed by this Court in Special Civil Application No.49 of 1998, dated 5.1.98, contended that in the identical matter, this Court has granted interim relief.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. From the copy of the order of this Court made in Special Civil Application No.49 of 1998, I find that the said matter pertained to the Labour & Employment Department of the State of Gujarat. Moreover, in the matter of transfer of officers/ employees of the Government, there cannot be any similarity in the cases. It is not the case of learned counsel for the petitioner that the Government Circular dated 2.1.98, annexure 'A', is statutory in character. The aforesaid Circular, in view of this fact, is only an administrative Circular and even if it is stated therein that the transfers of the Government servants or officers cannot be made in given contingencies after the Code of Conduct has been declared, at the most, it can be said to be a case of violation of the administrative Circular, which will not give any enforceable right to the petitioner. The validity, legality and propriety of the order of transfer of an employee or officer of the Government can be gone into by this Court only on two counts. Firstly, where the order has been made malafide and secondly, where in making the said order, the authority, while making thereof, has violated some statutory provisions. In the case in hand, the petitioner has not come up with any case of malafides of the authority who passed the order. So far as the second aspect is concerned, it is also not the case of the petitioner that in making of the order transferring the petitioner, the respondent No.2 had violated some statutory provisions. In view of this factual position as well as law as laid down by their Lordships of the Apex Court in the case of Union of India v. S.L.Abbas, reported in JT 1993(3) SC 748, no interference in the order of transfer of the petitioner is called for. So far as the violation of administrative Circular is concerned, that matter has also been dealt with by the Apex Court in the aforesaid case and the violation thereof does not give any enforceable right to

the petitioner. So even if it is a case where the transfer order of the petitioner has been made in violation of the Government Circular dated 2.1.98, it will not give any enforceable right to the petitioner. Yet, there is another aspect in the matter which needs to be stated. Even if it is taken to be a case where the transfer of the petitioner has been made by respondent No.2 in violation of the Government Circular dated 2.1.98, how it will cause any prejudice to the petitioner. Sitting under Article 226 of the Constitution of India, it is not a case where a writ of Mandamus or writ of Certiorari is a matter of course or right. Even where this Court finds that the impugned order has been made in violation of some Government Circular and if this Court is satisfied that it will not result in failure of justice or will not cause any prejudice to the petitioner, then the Court may decline to interfere in the matter. The learned counsel for the petitioner, except to point out some personal difficulties of the petitioner, is unable to show how any prejudice will be caused by this transfer or will result in failure of justice to the petitioner. Even if it is taken that the petitioner's son is suffering from some ailment, i.e. brain disease, how this transfer will affect the petitioner. Still the petitioner can have the treatment of his son at the said place. Moreover, from the writ petition, I do not find anything on record that there is some seriousness in the ailment of his son. Above all, if this is the only case, then the petitioner should approach to the higher authorities and they will consider his case. If any such representation is made to the higher authorities then it has to be considered, as what the Apex Court held in the case of Union of India v. S.L. Abbas (*supra*).

#. Taking into consideration the totality of the facts of this case, I do not find any merit in this Special Civil Application which calls for interference of this Court in the order of transfer of the petitioner. The Special Civil Application is rejected summarily.

(S.K.Keshote, J)

(sunil)